

RESOLUTION NO. 92-84

=====

A RESOLUTION OF THE LODI CITY COUNCIL  
APPROVING AMENDMENT NO. 3 AND REVISION 2 OF EXHIBIT B TO CONTRACT  
BETWEEN THE CITY OF LODI AND WESTERN AREA POWER ADMINISTRATION

=====

BE IT RESOLVED by the City Council of the City of Lodi, California, that the Mayor and the City Clerk be and are hereby authorized to execute for and on behalf of the City of Lodi, California, the attached Amendment No. 3 and Revision 2 of Exhibit B to Contract No. DE-MS65-82WP59014 for Electric Service with the Western Area Power Administration, which Amendment No. 3 and Revision 2 of Exhibit B were duly presented to the City Council and are hereby approved.

Dated: May 6, 1992

=====

State of California )  
                              ) ss  
City of Lodi              )

I, Alice M. Reimche, the duly appointed and qualified City Clerk of the City of Lodi, California do hereby certify that the foregoing is a true, accurate, and complete copy of a resolution duly passed and adopted at a regular meeting of the City Council of the City of Lodi, California, held on May 6, 1992, by the following vote:

Ayes: Council Members - Pennino, Sieglock, Snider and  
Pinkerton (Mayor)

Noes: Council Members - None

Absent: Council Members - Hinchman

Dated: May 6, 1992

By: Alice M. Reimche  
Alice M. Reimche  
City Clerk

Amendment No. 3  
Contract No. DE-MS65-82WP59015

UNITED STATES  
DEPARTMENT OF ENERGY  
WESTERN AREA POWER ADMINISTRATION  
CENTRAL VALLEY PROJECT

CONTRACT AMENDMENT WITH THE CITY OF LODI

(Settlement Arrangements Associated With Renewable Resource Allocation)

UNITED STATES  
DEPARTMENT OF ENERGY  
WESTERN AREA POWER ADMINISTRATION  
Central Valley Project

CONTRACT AMENDMENT WITH THE CITY OF LODI

(Settlement Arrangements Associated With Renewable Resource Allocation)

<u>Section</u>	<u>Title</u>	<u>Page</u>
1.	Preamble . . . . .	1
2.	Explanatory Recitals . . . . .	1-4
3.	Agreement . . . . .	4
4.	Termination of Existing Agreements . . . . .	4
5.	Term of Agreement . . . . .	4
6.	Definitions . . . . .	5
7.	Renewable Resource Allocation . . . . .	6-7
8.	Renewable Resource Allocation Energy Sales Price Escalation Settlement . . . . .	8-9
9.	Termination of Renewable Resource Allocation Energy Sales by the City . . . . .	9
10.	Release of Claims . . . . .	9-10
11.	Energy Sales by the City . . . . .	10
12.	Energy Scheduling Procedures . . . . .	10-11
13.	Payment . . . . .	11-12
14.	Modification of Conservation and Renewable Energy Program Section of the Primary Contract . . . . .	12-15
15.	Modification of General Power Contract Provisions Section of the Primary Contract . . . . .	15
16.	Other Agreements . . . . .	15-16
17.	Primary Contract to Remain in Full Force and Effect . . . . .	16
	Signature . . . . .	16
	Resolution	

UNITED STATES  
DEPARTMENT OF ENERGY  
WESTERN AREA POWER ADMINISTRATION  
Central Valley Project

CONTRACT AMENDMENT WITH THE CITY OF LODI

(Settlement Arrangements Associated With Renewable Resource Allocation)

1. Preamble: This Contract Amendment is made this \_\_\_\_\_ day of \_\_\_\_\_, 1992, between the United States of America, Western Area Power Administration (Western), and the City of Lodi (City or Contractor), as part of Contract No. DE-MS65-82WP59015, as amended (Primary Contract), pursuant to the same authorities as the Primary Contract, and subject to all the provisions of the Primary Contract except as herein amended.

2. Explanatory Recitals:

2.1 The City operates an electric utility system and is a preference customer of Western. Western and the City have entered into Contract No. DE-MS65-82WP59015, effective February 24, 1982, as amended.

2.2 Western has entered into Contract No. 14-06-200-2948A, dated July 31, 1967, as amended, supplemented or superseded, with Pacific Gas and Electric Company (PG&E), which provides for, among other things, the right of Western to use PG&E's transmission system for the transmission of power and energy from Western to its

1 preference customers of the Central Valley Project (CVP), including  
2 the City.

3  
4 2.3 The City is a member of the Northern California Power Agency  
5 (NCPA), a joint powers agency of the State of California, and has  
6 entitlement to 14.56 percent of the output of the Northern  
7 California Power Agency Geothermal Plan No. 1 (NCPA Powerplant),  
8 which has a capability of 120 MW.

9  
10 2.4 Western declared its intent in its 1981 CVP Final Power Marketing  
11 Plan to support renewable resources and cogeneration projects  
12 through the marketing of 30 MW of which 1.5 MW was allocated to the  
13 City for its participation in the NCPA Powerplant.

14  
15 2.5 Under the provisions of Amendment No. 1 to the Primary Contract,  
16 Western allocated 1.5 MW of capacity and associated energy to the  
17 City with the stipulation that the City sell to Western an  
18 equivalent amount of energy from the NCPA Powerplant or other  
19 sources available to the City.

20  
21 2.6 Western began purchasing energy from the City in September 1986  
22 pursuant to the terms of Amendment No. 1 to the Primary Contract at  
23 a rate of 35 mills/kwh and continued to purchase energy from the  
24 City at a rate of 35 mills/kwh through March 1991.

25  
26 2.7 Amendment No. 1 to the Primary Contract included provisions which  
27 provided for the initial rate at which Western purchased energy

1 from the City to escalate based on increases in the operation and  
2 maintenance costs and geothermal steam costs associated with the  
3 NCPA Powerplant.  
4

5 2.8 The City and Western agree that the provisions in Amendment No. 1  
6 to the Primary Contract which provide for Western to pay escalated  
7 rates for energy purchased from the City may be interpreted  
8 differently.  
9

10 2.9 As set forth in Letter of Agreement No. 91-SAO-10080, dated  
11 March 29, 1991, the City and Western negotiated a settlement  
12 providing, among other things, for Western to pay the City an  
13 additional amount of money to reflect the escalated cost of the  
14 energy produced by the NCPA Powerplant and purchased by Western  
15 from September 1986 through March 1991.  
16

17 2.10 As part of the settlement reached between Western and the City and  
18 set forth in Letter of Agreement No. 91-SAO-10080, the City agreed  
19 to discontinue energy sales to Western as provided for under  
20 Amendment No. 1 to the Primary Contract as of March 31, 1991, in  
21 return for Western providing the City an additional Contract Rate  
22 of Delivery of 0.6 MW beginning on April 1, 1991, and continuing  
23 through the term of the Primary Contract.  
24

25 2.11 The City and Western desire to incorporate the understandings  
26 reached in Letter of Agreement No. 91-SAO-10080 into this Contract  
27 Amendment.  
28

1 2.12 The Parties also desire to provide for a scheduling arrangement  
2 herein whereby the City may, from time to time, make energy  
3 available for sale to Western, and Western may purchase such energy  
4 at prices and under conditions to be mutually agreed upon.  
5

6 3. Agreement: The Parties agree to the terms and conditions set forth  
7 herein.  
8

9 4. Termination of Existing Agreements: Amendment No. 1, dated  
10 September 29, 1983, to the Primary Contract and Letter of Agreement  
11 No. 91-SAO-10080, dated March 29, 1991, are hereby terminated as of the  
12 effective date of this Contract Amendment.  
13

14 5. Term of Agreement:

15 5.1 This Contract Amendment shall be effective at 0000 hour on the  
16 first day of April 1992, and shall terminate at 2400 hours on  
17 June 30, 1994. In addition, this Contract Amendment shall be  
18 subject to prior termination as otherwise provided for herein or in  
19 the Primary Contract.  
20

21 5.2 This Contract Amendment may be terminated by the City upon one year  
22 written notice of termination to Western.  
23

24 5.3 Upon termination of this Contract Amendment, benefits conferred  
25 upon the Parties and obligations incurred hereunder shall be  
26 preserved until satisfied.  
27  
28

1 6. Definitions:

2 6.1 Contract Rate of Delivery - The City's maximum rate of delivery of  
3 firm electric energy from the CVP pursuant to the Primary Contract  
4 and the PG&E Contract, including any amendments to said Contracts.  
5

6 6.2 NCPA Powerplant - The NCPA Geothermal Plant No. 1 of which the City  
7 has an entitlement to 14.56 percent of the output and which has a  
8 capability of 120 MW.  
9

10 6.3 PG&E Contract - Contract No. 14-06-200-2948A dated July 31, 1967,  
11 between Western and PG&E, as such Contract may hereinafter be  
12 amended, supplemented or superseded, providing for, among other  
13 things, a right of Western to use PG&E's transmission system for  
14 the transmission of power and energy from the CVP to preference  
15 customers of the CVP, including the City.  
16

17 6.4 Point(s) of Receipt - The point agreed to by the City and Western  
18 where energy may be delivered by the City to Western or to PG&E for  
19 service to Western's loads.  
20

21 6.5 Power Bill - The statement of charges issued to meet the  
22 obligations of Western and the City under the Primary Contract.  
23

24 6.6 Renewable Resource Allocation - The 2.1 MW portion of the City's  
25 Contract Rate of Delivery made available to the City by Western  
26 pursuant to Section 7 hereunder, and energy associated with such  
27 portion.  
28



1 | 7. Renewable Resource Allocation:

2 | 7.1 Upon the effective date of this Contract Amendment, the City's  
3 | Contract Rate of Delivery shall be increased by 2.1 MW. The 2.1 MW  
4 | Renewable Resource Allocation is comprised of a 1.5 MW Contract  
5 | Rate of Delivery which was provided to the City pursuant to  
6 | Amendment No. 1 to the Primary Contract and a 0.6 MW Contract Rate  
7 | of Delivery which was provided to the City pursuant to Letter of  
8 | Agreement No. 91-SAO-10080.

9 |  
10 | 7.2 The right of the City to receive the Renewable Resource Allocation  
11 | shall be contingent upon the City maintaining a participation  
12 | interest in, or an entitlement to, the output of the NCPA  
13 | Powerplant at least equal to the 2.1 MW Renewable Resource  
14 | Allocation granted by this Contract Amendment. If the City fails  
15 | to maintain a participation interest in, or an entitlement to, the  
16 | output of the NCPA Powerplant at least equal to the 2.1 MW  
17 | Renewable Resource Allocation granted by this amendment, Western  
18 | may, at its discretion, withdraw all or a portion of the 2.1 MW  
19 | Renewable Resource Allocation.

20 |  
21 | 7.3 Pursuant to Section 10(d) and 10(e) of the Primary Contract, in  
22 | order to supply power to preference customers in the Trinity,  
23 | Tuolumne, and Calaveras Counties, California, Western may, in  
24 | accordance with the requirement of Reclamation Law and the Final  
25 |  
26 |  
27 |  
28 |

1 Withdrawal Procedures (52 FR 7702), withdraw all or part of the  
2 City's Renewable Resource Allocation.  
3

4 7.4 Pursuant to Section 10(f) of the Primary Contract, in order to  
5 supply the project use requirements of the CVP, including operation  
6 of the Federal San Luis Unit, Western may, in accordance with the  
7 Final Withdrawal Procedures (52 FR 7702), withdraw all or part of  
8 the City's Renewable Resource Allocation.  
9

10 7.5 Pursuant to Section 10(g) of the Primary Contract, upon receipt of  
11 notice of reduction in the City's Renewable Resource Allocation,  
12 the City may terminate this Contract Amendment within thirty (30)  
13 days after receipt of such notice by notifying Western in writing  
14 prior to the desired termination date.  
15

16 7.6 The provisions set forth in Sections 10(h) and 10(i) of the Primary  
17 Contract shall also be applicable to the Renewable Resource  
18 Allocation provided for in this Contract Amendment.  
19

20 7.7 All rights and obligations of the City and Western, with respect to  
21 the City's Renewable Resource Allocation, shall be consistent with  
22 the Primary Contract and the PG&E Contract.  
23  
24  
25  
26  
27  
28

1 8. Renewable Resource Allocation Energy Sales Price Escalation Settlement:

2 8.1 In accordance with the settlement set forth in Letter of Agreement  
3 No. 91-SAO-10080 regarding the price of the energy sold by the City  
4 to Western from September 1986 through December 1990 associated  
5 with the City's Renewable Resource Allocation, Western agrees to  
6 pay the City the sum of four hundred ninety-two thousand four  
7 hundred fifty dollars (\$492,450.00).

8  
9 8.2 In addition to the amount set forth in Section 8.1 and consistent  
10 with the settlement reached in Letter of Agreement  
11 No. 91-SAO-10080, Western agrees to pay the City an additional sum  
12 of money for energy sold to Western by the City during January,  
13 February, and March 1991. Such additional amount of money owed to  
14 the City shall be determined by multiplying the amount of energy  
15 sold to Western during said time period by the difference between  
16 the price Western actually paid for the energy (35 mills/kWh) and  
17 the then-current maximum price provided for pursuant to Section 15  
18 of Amendment No. 1 to the Primary Contract (50 mills/kWh). Since  
19 the City sold and delivered 3,240,000 kWh to Western in said time  
20 period, Western agrees to pay the City an additional sum of forty-  
21 eight thousand six hundred dollars (\$48,600.00).

22  
23 8.3 Western agrees to provide the money owed to the City, as computed  
24 in Sections 8.1 and 8.2, in either a lump sum payment or as a  
25 credit, equally distributed for a period of time not to exceed  
26

1 twelve (12) months, on the City's monthly power bill(s). The City  
2 shall have thirty (30) days from the effective date of this  
3 Contract Amendment to notify Western in writing of the method of  
4 payment it desires. If the City fails to provide such notification  
5 to Western, Western will provide the appropriate credit in the  
6 City's monthly power bill over the succeeding twelve (12) months.  
7

8 9. Termination of Renewable Resource Allocation Energy Sales by the City to

9 Western: As consideration for the additional 0.6 MW Renewable Resource  
10 Allocation granted to the City pursuant to Section 7.1 and the  
11 compensation to be provided to the City pursuant to Section 8, the City  
12 agrees that Western, as of April 1, 1991, shall have no continuing  
13 obligation to purchase any energy from the City under the terms and  
14 conditions of Amendment No. 1 to the Primary Contract. In addition,  
15 Western and the City agree that Western shall have no obligation to  
16 purchase energy from the City associated with the Renewable Resource  
17 Allocation set forth in Section 7.1 herein.  
18

19 10. Release of Claims: As additional consideration for the additional  
20 0.6 MW Renewable Resource Allocation granted to the City pursuant to  
21 Section 7.1; the compensation to be provided to the City pursuant to  
22 Section 8; and the termination of energy sales by the City to Western  
23 pursuant to Section 9; the City hereby agrees to waive and release any  
24 and all claims that may exist between Western and the City regarding the  
25 pricing or quantity of energy sold by the City to Western associated with  
26  
27  
28

1 the City's Renewable Resource Allocation from the effective date of  
2 Amendment No. 1 to the Primary Contract through the effective date of  
3 this Contract Amendment.

4  
5 11. Energy Sales by the City:

6 11.1 The City, or the City's designated agent, at its sole discretion,  
7 will determine the price, amounts, and times that energy is  
8 available to Western.

9  
10 11.2 Western shall determine, at its sole discretion, the amounts of  
11 such energy offered by the City, or the City's designated agent,  
12 which is desired to be purchased at the Point(s) of Receipt.  
13 Western shall schedule the energy desired to be purchased. Energy  
14 accounting hereunder shall be based on the scheduled quantities.

15  
16 11.3 The City shall deliver the energy requested by Western, and Western  
17 shall accept said energy deliveries made available by the City, or  
18 the City's designated agent, pursuant to Section 12 herein.

19  
20 12. Energy Scheduling Procedures:

21 12.1 The City, or the City's designated agent, shall notify Western by  
22 1000 hours each workday, or as otherwise agreed, of the hourly or  
23 half-hourly amounts and price per kilowatt-hour for energy to be  
24 made available for sale to Western for the next day or days.

1 12.2 Western shall notify the City, or the City's designated agent, by  
2 1200 hours each workday, or as otherwise agreed, of the hourly or  
3 half-hourly amounts of energy that Western requests from the City  
4 at the price quoted by the City, or the City's designated agent,  
5 for the following day or days.  
6

7 12.3 The City, or the City's designated agent, or Western shall notify  
8 the other Party of any adjustments to previously agreed upon  
9 scheduled amounts as soon as practicable, but no later than fifteen  
10 (15) minutes prior to any scheduled hour or half-hour.  
11

12 12.4 Both Parties shall use their best efforts to keep changes to the  
13 scheduled amounts to a minimum.  
14

15 13. Payment:

16 13.1 The City shall pay Western for its Renewable Resource Allocation at  
17 the established CVP rates for firm capacity and energy as provided  
18 in the Primary Contract.  
19

20 13.2 Western shall pay the City for the energy scheduled at the prices  
21 agreed upon by Western each month pursuant to Section 11 herein.  
22

23 13.3 Western may credit the monthly amount it owes the City for energy  
24 purchases made hereunder against the amount the City owes Western  
25 under the Power Bill for the same month. At the discretion of  
26  
27  
28

1 Western, if the amount owed by the City under the Power Bill is  
2 less than the amount owed by Western for energy purchases  
3 hereunder, Western shall either pay the difference to the City as  
4 soon as the necessary vouchers can be prepared, ordinarily by the  
5 last day of the month following the month in which the statement of  
6 charges was received by Western, or credit the difference in the  
7 City's Power Bill in the next succeeding month.

8  
9 13.4 Western may transfer or assign its payment obligations to the City  
10 hereunder to other Western customer(s), and the City agrees to  
11 receive payment from such customer(s) so long as payment is made  
12 under the same conditions as provided herein; Provided, That any  
13 such transfer or assignment shall not affect the rights and  
14 obligations of the Parties hereunder and Western shall remain  
15 primarily liable for its obligations hereunder. Such transfer or  
16 assignment shall be provided for under the terms and conditions  
17 between Western and its customers. Western agrees to notify the  
18 City as soon as is practicable each month that Western exercises  
19 its rights herein to transfer or assign its payment obligations to  
20 another Western customer.

21  
22 14. Modification of Conservation and Renewable Energy Program Section of the  
23 Primary Contract: Section 17 of the Primary Contract is hereby deleted  
24 and the following substituted therefor:  
25  
26  
27  
28

1                   "CONSERVATION AND RENEWABLE ENERGY PROGRAM

2           17. (a)   The City shall develop and implement a conservation and  
3                   renewable energy program. The City's program will be  
4                   developed and implemented in accordance with the terms  
5                   of the "Final Guidelines and Acceptance Criteria for  
6                   Customer Conservation and Renewable Energy Programs"  
7                   published in the Federal Register on August 21, 1985  
8                   (50 FR 33892), and any subsequent amendments thereto.

9  
10           (b)   To effect a conservation and renewable energy program,  
11                   Western and the City agree as follows:

12  
13                   (1)   If requested and if within its capabilities,  
14                   Western will provide guidance and assistance in  
15                   the development of a conservation and renewable  
16                   energy program.

17  
18                   (2)   The City will develop a conservation and  
19                   renewable energy program suitable for its own  
20                   geographic area and type of utility operation,  
21                   and will submit said program to Western within  
22                   twelve (12) months of the date of execution of  
23                   this Contract Amendment.



1 (3) Conservation and renewable energy programs shall  
2 consist of a designated number of activities, as  
3 stipulated in the Guidelines and Acceptance  
4 Criteria. Credit will be given for past  
5 accomplishments if they are ongoing and current  
6 under the Guidelines and Acceptance Criteria.  
7 Approval and periodic review and verification of  
8 any program shall take place in accordance with  
9 the Guidelines and Acceptance Criteria.

10  
11 (c) The initial conservation and renewable energy program  
12 submitted by the City to Western will either be  
13 approved or disapproved within three (3) months of  
14 receipt. If an initial submittal is disapproved, a  
15 notification of deficiency in the program will be given  
16 in writing by Western. Deficiencies must be remedied  
17 within twelve (12) months of the date of notification.  
18 If an existing program is revoked at any time after  
19 approval, a notification of deficiencies in such  
20 program will be given in writing by Western.  
21 Deficiencies must be remedied within twelve (12) months  
22 of the date of notification.

23  
24 (d) If deficiencies in any program are not corrected within  
25 twelve (12) months of Western's written rejection of a  
26  
27  
28

1 program, the City's firm capacity and associated energy  
2 entitlement, as set forth in this Contract, may be  
3 reduced by ten (10) percent at the discretion of the  
4 Administrator."

- 5  
6 15. Modification of General Power Contract Provisions Section of the Primary  
7 Contract: Article 19 of the Primary Contract is hereby deleted and the  
8 following substituted therefor:

9  
10 "GENERAL POWER CONTRACT PROVISIONS

11 19. The General Power Contract Provisions effective January 3,  
12 1989, attached hereto, are hereby made a part of this  
13 Contract the same as if they had been expressly set forth  
14 herein."

- 15  
16 16. Other Agreements:

17 16.1 If conflicts exist between any of the terms of this Contract  
18 Amendment and the terms of the PG&E Contract, the terms of the PG&E  
19 Contract shall control. This provision shall not constitute a  
20 waiver of claims which the City might otherwise have against  
21 Western or PG&E, and which do not affect interpretation of the  
22 terms of this Contract Amendment, except as such specific claims  
23 have been waived in accordance with Section 10 herein.

1 16.2 This Contract Amendment shall be in addition to and shall  
2 supplement the Primary Contract. Termination of this Contract  
3 Amendment or breach of any of the terms of this Contract Amendment  
4 shall not constitute termination of the Primary Contract or breach  
5 of any of the terms of the Primary Contract.  
6

7 17. Primary Contract to Remain in Full Force and Effect: Except as  
8 expressly modified by this Contract Amendment, said Primary Contract  
9 shall remain in full force and effect, and this Contract Amendment shall  
10 be subject to all provisions of the Primary Contract, except as modified  
11 herein.  
12

13 IN WITNESS WHEREOF, the Parties hereto have caused this Contract Amendment to  
14 be executed the day and year first above written.  
15

16 WESTERN AREA POWER ADMINISTRATION

17 By: \_\_\_\_\_  
18 Title: Area Manager  
19 Address: 1825 Bell Street, Suite 105  
Sacramento, California 95825

20 (Seal)

21 ATTEST:

22 By: Alice M. Reimche  
23 Alice M. Reimche

24 Title: City Clerk  
25

26 Approved as to form:

27 BW McNatt  
28 Bobby W. McNatt, City Attorney

CITY OF LODI, CALIFORNIA  
By: Thomas A. Peterson  
Thomas A. Peterson  
Title: City Manager  
Address: P. O. Box 3006  
Lodi, CA 95241-1910

EXHIBIT B  
(Contract Rate of Delivery)

1. This revised Exhibit B, made this \_\_\_\_\_ day of \_\_\_\_\_, 1992, to be effective under and as part of Contract No. DE-MS65-82WP59015, dated February 24, 1982 (hereinafter called the Contract), shall become effective on the first day of April 1992, shall, on said date, terminate and supersede Exhibit B dated February 11, 1991, and shall remain in effect until superseded by another Exhibit B; Provided, That this Exhibit B or any superseding Exhibit B shall be terminated by the termination of the Contract.
2.
  - a. On and after the effective date of this Exhibit B, the Contract Rate of Delivery (CRD) for firm power shall be 8,063 kilowatts of Westlands Withdrawable Power and 3,673 kilowatts of the 26 megawatts of firm power, and 2,100 kilowatts pursuant to Amendment No. 3 to this Contract, which provides for the City's Renewable Resource Allocation, for a total CRD of 13,836 kilowatts.
  - b. The City's Renewable Resource Allocation will be terminated in accordance with Section 5 of Amendment No. 3.
3. The original allocation referred to in Section 10(c) of this Contract shall be 8,327 kilowatts of Westlands Withdrawable Power and 3,673 kilowatts of the 26 megawatts of firm power for a total of 12,000 kilowatts.

WESTERN AREA POWER ADMINISTRATION

By: \_\_\_\_\_  
Title: Area Manager  
Address: 1825 Bell Street, Suite 105  
Sacramento, California 95825

ATTEST:

By: Alice M. Reimche  
Alice M. Reimche

Title: City Clerk

CITY OF LODI, CALIFORNIA

By: Thomas A. Peterson  
Title: Thomas A. Peterson, City Manager  
Address: P.O. Box 3006  
Lodi, Ca 95241-1910

Approved as to form:

Bobby W. McNatt  
Bobby W. McNatt, City Attorney

WESTERN AREA POWER ADMINISTRATION  
GENERAL POWER CONTRACT PROVISIONS

	<u>PAGE</u>
<b>I. APPLICABILITY.</b>	
1. Applicability .....	2
<b>II. DELIVERY OF SERVICE PROVISIONS.</b>	
2. Character of Service .....	2
3. Use of Capacity or Energy in Excess of Contract Obligation ....	2
4. Continuity of Service .....	2-3
5. Multiple Points of Delivery .....	3
6. Metering .....	3-4
7. Existence of Transmission Service Contract .....	4
* 8. Conditions of Transmission Service .....	4-5
9. Multiple Points of Delivery Involving Direct and Transmitted Deliveries .....	5
10. Construction, Operation, and Maintenance of Contractor's Power System.....	5
<b>III. RATES, BILLING, AND PAYMENT PROVISIONS.</b>	
11. Change of Rates .....	6
12. Minimum Seasonal or Annual Capacity Charge .....	6
13. Billing and Payment .....	6-7
14. Nonpayment of Bills in Full When Due .....	7
15. Adjustments for Fractional Billing Period .....	7
16. Adjustments for Curtailments to Firm Service .....	7-8
<b>IV. POWER SALES PROVISIONS.</b>	
17. Resale of Firm Electric Service .....	8
18. Contract Subject to Colorado River Compact.....	8
<b>V. FACILITIES PROVISIONS.</b>	
19. Design Approval .....	9
20. Inspection and Acceptance .....	9
21. As-Built Drawings .....	9
22. Equipment Ownership Markers .....	9-10
23. Third-Party Use of Facilities .....	10
24. Changes to Western Control Facilities .....	10
25. Modification of Western Facilities .....	10
26. Transmission Rights .....	11
* 27. Construction and Safety Procedures .....	11-12
<b>VI. OTHER PROVISIONS.</b>	
* 28. Authorized Representatives of the Parties.....	12
29. Effect of Section Headings.....	12
30. Operating Guidelines and Procedures.....	12
31. Uncontrollable Forces .....	12-13
32. Liability .....	13
* 33. Environmental Compliance .....	13
34. Cooperation of Contracting Parties .....	13
35. Transfer of Interest in Contract by Contractor .....	14
36. Waivers .....	14
37. Notices .....	14
38. Contingent Upon Appropriations .....	14
39. Officials Not to Benefit .....	14
40. Covenant Against Contingent Fees .....	15
* 41. Contract Work Hours and Safety Standards .....	15
* 42. Equal Opportunity Employment Practices .....	15
43. Use of Convict Labor .....	15

Effective January 3, 1989

WESTERN AREA POWER ADMINISTRATION  
GENERAL POWER CONTRACT PROVISIONS

I. APPLICABILITY.

1. Applicability.

1.1. These General Power Contract Provisions shall be a part of the contract to which they are attached. These provisions set forth general conditions applicable to the contract. Specific terms set forth in the contract have precedence over any provision herein.

1.2. If the Contractor has member utilities which are either directly or indirectly receiving benefits from the contract, then the Contractor shall require such members to comply with the General Power Contract Provisions, Articles 10, 17, 18, 33, 34, 41, 42, and 43.

II. DELIVERY OF SERVICE PROVISIONS.

2. Character of Service.

Electric energy supplied or transmitted under the contract will be three-phase, alternating current, at a nominal frequency of sixty (60) hertz (cycles per second).

3. Use of Capacity or Energy in Excess of Contract Obligation.

The Contractor is not entitled to use Federal power, energy, or capacity in amounts greater than the Western contract delivery obligation in effect for each type of service provided for in the contract except with the approval of the Contracting Officer. Unauthorized overruns of contract delivery obligations shall be subject to charges specified in the contract or the applicable rate schedules. Overruns shall not establish any continuing right thereto and the Contractor shall cease any overruns when requested by the Contracting Officer, or in the case of authorized overruns, when the approval expires, whichever occurs first. Nothing in the contract shall obligate Western to increase any delivery obligation. If additional power, energy, or capacity is not available from Western, the responsibility for securing additional power, energy, or capacity shall rest wholly with the Contractor.

4. Continuity of Service.

Electric service will be supplied or transmitted continuously except for: (1) fluctuations, interruptions, or reductions due to uncontrollable forces, as defined in Article 31 herein, (2) fluctuations, interruptions, or reductions due to operation of devices installed for power system protection; and (3) temporary fluctuations, interruptions, or reductions, which, in the opinion of the party supplying the service, are

necessary or desirable for the purposes of maintenance, repairs, replacements, installation of equipment, or investigation and inspection. The party supplying service, except in case of emergency, will give the party to whom service is being provided reasonable advance notice of such temporary interruptions or reductions and will remove the cause thereof with diligence.

5. Multiple Points of Delivery.

When electric service is supplied at or transmitted to two or more points of delivery under the same rate schedule, said rate schedule shall apply separately to the service supplied at or transmitted to each point of delivery; Provided, That where the meter readings are considered separately, and during abnormal conditions, the Contractor's system is interconnected between points of delivery such that duplication of metered power is possible, the meter readings at each affected point of delivery will be adjusted to compensate for duplication of power demand recorded by meters at alternate points of delivery due to abnormal conditions which are beyond the Contractor's control or temporary conditions caused by scheduled outages.

6. Metering.

6.1. The total electric power and energy supplied or transmitted under the contract will be measured by metering equipment to be furnished and maintained by Western or by the Contractor acting as the designated representative of Western. The Contractor shall ensure that metering equipment furnished and maintained by the Contractor or another power supplier, as provided in the contract, meets the metering standards of Western if such metering equipment will be used for billing or other accounting purposes by Western.

6.2. Meters shall be sealed and the seals shall be broken only upon occasions when the meters are to be inspected, tested, or adjusted, and representatives of the interested parties shall be afforded reasonable opportunity to be present upon such occasions. Metering equipment shall be inspected and tested at least once each year by the party responsible for meter maintenance and at any reasonable time upon request by either party hereto, a supplemental power supplier, transmission agent, or control area operator. Any metering equipment found to be damaged, defective, or inaccurate shall be repaired and readjusted or replaced by the party responsible for meter maintenance. Meters found with broken seals shall be tested for tampering and, if appropriate, meter readings shall be adjusted by Western pursuant to Article 6.3 below.

6.3. Except as otherwise provided in Article 6.4 hereof, should any meter that is needed by Western for billing or other accounting purposes fail to register accurately, the electric power and energy supplied or transmitted during such period of failure to register accurately, shall, for billing purposes, be estimated by the Contracting Officer from the best available information.

6.4. If acceptable inspections and tests of a meter needed by Western for billing or other accounting purposes disclose an error exceeding two percent (2%), then correction based upon the inaccuracy found shall be made of the records of services furnished during the period that such inaccuracy has existed as determined by the Contracting Officer; Provided, That if such period of inaccuracy cannot be determined, correction shall be made for the period beginning with the monthly billing period immediately preceding the billing period during which the test was made.

6.5. Any correction in billing resulting from correction in meter records shall normally be made in the next monthly bill rendered by Western to the Contractor. Payment of such bill shall constitute full adjustment of any claim between the parties hereto arising out of inaccuracy of metering equipment.

7. Existence of Transmission Service Contract.

If the contract provides for Western to furnish services using the facilities of a third party, the obligation of Western shall be subject to and contingent upon the existence of a transmission service contract granting Western rights to use such facilities. If Western acquires or constructs facilities which would enable it to furnish direct service to the Contractor, Western, at its option, may furnish service over its own facilities.

8. Conditions of Transmission Service.

8.1. When the electric service under the contract is furnished by Western over the facilities of others by virtue of a transmission service arrangement, the power and energy will be furnished at the voltage available and under the conditions which exist from time to time on the transmission system over which the service is supplied.

\* 8.2. Unless otherwise provided in the contract or attached rate schedule, the Contractor shall maintain a power factor at each point of delivery from Western's transmission agent as required by the transmission agent.

8.3. Western will endeavor to inform the Contractor from time to time of any changes contemplated on the system over which the service is supplied, but the costs of any changes made necessary in the Contractor's system because of changes or conditions on the system over which the service is supplied shall not be a charge against or a liability of Western.

8.4. If the Contractor, because of changes or conditions on the system over which service under the contract is supplied, is required to make changes on its system at its own expense in order to continue receiving service under the contract, then the Contractor may terminate service under the contract upon not less than sixty (60) days' written notice given to the Contracting Officer prior to making such changes, but not thereafter.

\* Revised January 3, 1989.



8.5. If Western notifies the Contractor that electric service provided for under the contract cannot be delivered to the Contractor because of an insufficiency of capacity available to Western in the facilities of others over which service under the contract is supplied, then the Contractor may terminate service under the contract upon not less than sixty (60) days' written notice given to the Contracting Officer prior to the date on which said capacity ceases to be available to Western, but not thereafter.

9. Multiple Points of Delivery Involving Direct and Indirect Deliveries.

When Western has provided line and substation capacity under the contract for the purpose of delivering electric service directly to the Contractor at specified direct points of delivery and also has agreed to absorb transmission service allowance or discounts for deliveries of energy over other system(s) to indirect points of delivery and the Contractor shifts any of its loads served under the contract from direct delivery to indirect delivery, Western will not absorb the transmission service costs on such shifted load until the unused capacity, as determined solely by the Contracting Officer, available at the direct delivery points affected is fully utilized.

10. Construction, Operation, and Maintenance of Contractor's Power System.

The Contractor shall and, if applicable, shall require each of its members or transmission agents to construct, operate, and maintain its power system in a manner which, as determined by the Contracting Officer, will not interfere with the operation of the system of Western or its transmission agents over which electric services are furnished to the Contractor under the contract, and in a manner which will coordinate with the protective relaying and other protective arrangements of the system(s) of Western or Western's transmission agents. Western may reduce or discontinue furnishing services to the Contractor if, after notice by the Contracting Officer, the Contractor fails or refuses to make such changes as may be necessary to eliminate an unsatisfactory condition on the Contractor's power system which is determined by the Contracting Officer to interfere significantly under current or probable conditions with any service supplied from the power system of Western or from the power system of a transmission agent of Western. Such a reduction or discontinuance of service will not relieve the Contractor of liability for any minimum charges provided for in the contract during the time said services are reduced or discontinued. Nothing in this article shall be construed to render Western liable in any manner for any claims, demands, costs, losses, causes of action, damages, or liability of any kind or nature arising out of or resulting from the construction, operation, or maintenance of the Contractor's power system.

### III. RATES, BILLING, AND PAYMENT PROVISIONS.

#### 11. Change of Rates.

Rates applicable under the contract shall be subject to change by Western in accordance with appropriate rate adjustment procedures. If at any time the United States promulgates a rate changing a rate then in effect under the contract, it will promptly notify the Contractor thereof. Rates shall become effective as to the contract as of the effective date of such rate. The Contractor, by written notice to the Contracting Officer within ninety (90) days after the effective date of a rate change, may elect to terminate the service billed by Western under the new rate. Said termination shall be effective on the last day of the billing period requested by the Contractor not later than two (2) years after the effective date of the new rate. Service provided by Western shall be paid for at the new rate regardless of whether the Contractor exercises the option to terminate service.

#### 12. Minimum Seasonal or Annual Capacity Charge.

When the rate in effect under the contract provides for a minimum seasonal or annual capacity charge, a statement of the minimum capacity charge due, if any, shall be included in the bill rendered for service for the last billing period of the service season or contract year as appropriate, adjusted for increases or decreases in the contract rate of delivery and for the number of billing periods during the year or season in which service is not provided. Where multiple points of delivery are involved and the contract rate of delivery is stated to be a maximum aggregate rate of delivery for all points, in determining the minimum seasonal or annual capacity charge due, if any, the monthly capacity charges at the individual points of delivery shall be added together.

#### 13. Billing and Payment.

13.1. Western will issue bills to the Contractor for service furnished during the preceding month within ten (10) days after the end of the billing period.

13.2. If Western is unable to issue a timely monthly bill, it may elect to render an estimated bill for that month to be followed by the final bill. Such estimated bill shall be subject to the same payment provisions as a final bill.

13.3. Payments are due and payable by the Contractor before the close of business on the twentieth (20th) calendar day after the date of issuance of each bill or the next business day thereafter if said day is a Saturday, Sunday, or Federal holiday. Bills shall be considered paid when payment is received by Western; Provided, That payments received by mail will be accepted as timely and without assessment of the charge provided for in Article 14 if a United States Post Office first class mail postmark indicates the payment was mailed at least three (3) calendar days before the due date.

13.4. Whenever the parties agree, payments due Western by the Contractor may be offset against payments due the Contractor by Western for the sale or exchange of electric power and energy, use of transmission facilities, operation and maintenance of electric facilities, and other services. For services included in net billing procedures, payments due one party in any month shall be offset against payments due the other party in such month, and the resulting net balance shall be paid to the party in whose favor such balance exists. The parties shall exchange such reports and information that either party requires for billing purposes. Net billing shall not be used for any amounts due which are in dispute.

14. Nonpayment of Bills in Full When Due.

14.1. Bills not paid in full by the Contractor by the due date specified in Article 13 hereof shall bear an initial charge of two percent (2%) of the amount unpaid. Each day thereafter, a charge of five hundredths percent (0.05%) of the principal sum unpaid shall be added until the amount due, including the two percent (2%) initial charge, is paid in full. Payments received will first be applied to the charges for late payment assessed on the principal and then to payment of the principal.

14.2. Western shall have the right, upon not less than fifteen (15) days advance written notice, to discontinue furnishing the services specified in the contract for nonpayment of bills in full when due, and to refuse to resume such services so long as any part of the amount due remains unpaid. Such a discontinuance of service will not relieve the Contractor of liability for minimum charges during the time service is so discontinued. The rights reserved to Western herein shall be in addition to all other remedies available to Western either by law or in equity, for the breach of any of the terms hereof.

15. Adjustments for Fractional Billing Period.

For a fractional part of a billing period at the beginning or end of electric service, at the beginning or end of irrigation pumping service each year, a fractional billing period under a new rate schedule, and for fractional periods due to withdrawals of electric services, the demand or capacity charge and minimum charges shall each be proportionately adjusted in the ratio that the number of hours that electric service is available to the Contractor in such fractional billing period bears to the total number of hours in the billing period involved.

16. Adjustments for Curtailments to Firm Service.

16.1. Billing adjustments will be made if firm electric service is interrupted or reduced because of conditions on the power system of the United States for periods of 1 hour or longer in duration each. Billing adjustments will not be made when such curtailment of electric service is due to a request by the Contractor or a discontinuance of electric service by Western pursuant to Article 14 (Nonpayment of Bills In Full When Due). For purposes of billing adjustments under this article, the term power system of the United States shall include transmission facilities used under contract but not owned by the United States.

16.2. The total number of hours of curtailed firm electric service in any billing period shall be determined by adding: (1) the sum of the number of hours of interrupted electric service to (2) the product, for each reduction, of: the number of hours of reduced electric service and the percentage by which electric service was reduced below the delivery obligation of Western at the time of each said reduction of electric service. The demand or capacity charge and applicable minimum charges shall each be proportionately adjusted in the ratio that the total number of hours of electric service determined to have been curtailed bears to the total number of hours in the billing period involved.

16.3. The Contractor shall make written claim within thirty (30) days after receiving the monthly bill, for adjustment on account of any curtailment of firm electric service, for periods of 1 hour or longer in duration each, alleged to have occurred that is not reflected in said bill. Failure to make such written claim, within said thirty-day (30-day) period, shall constitute a waiver of said claim. All curtailments of electric service, which are due to conditions on the power system of the United States, shall be subject to the provisions of this section; Provided, That withdrawal of power and energy under the contract shall not be considered a curtailment of electric service.

#### IV. POWER SALES PROVISIONS.

17. Resale of Firm Electric Service (Wholesale Sales for Resale).

The Contractor shall not sell any firm electric power or energy supplied under the contract to any electric utility customer of the Contractor for resale by that utility customer; Provided, That the Contractor may sell the electric power and energy supplied under the contract to its members on condition that said members not sell any of said power and energy to any customer of the member for resale by that customer.

18. Contract Subject to Colorado River Compact.

Where the energy sold under the contract is generated from waters of the Colorado River system, the contract is made upon the express condition and with the express covenant that all rights under the contract shall be subject to and controlled by the Colorado River Compact approved by Section 13(a) of the Boulder Canyon Project Act of December 21, 1928, (45 Stat. 1057) and the parties to the contract shall observe and be subject to and controlled by said Colorado River Compact in the construction, management, and operation of the dams, reservoirs, and powerplants from which electrical energy is to be furnished by Western to the Contractor under the contract, and in the storage, diversion, delivery, and use of water for the generation of electrical energy to be delivered by Western to the Contractor under the contract.

## V. FACILITIES PROVISIONS.

### 19. Design Approval.

All facilities, construction, and installation by the Contractor pursuant to the contract shall be subject to the approval of Western. Facilities interconnections shall normally conform to Western's current "General Requirements for Interconnection," in effect upon the signing of the contract document providing for each interconnection, copies of which are available from the Contracting Officer. At least ninety (90) days, unless otherwise agreed, prior to the date the Contractor proposes to commence construction or to incur an obligation to purchase facilities to be installed pursuant to the contract, whichever date is the earlier, the Contractor shall submit, for the approval of Western, detailed designs, drawings, and specifications of the facilities the Contractor proposes to purchase, construct, and install. The Contractor assumes all risks for construction commenced or obligations to purchase facilities incurred prior to receipt of approval from Western. Western review and approval of designs and construction work in no way implies that Western is certifying that the designs meet the Contractor's needs.

### 20. Inspection and Acceptance.

Western shall have the right to inspect the materials and work furnished by the Contractor, its agents, employees, and subcontractors pursuant to the contract. Such inspections shall be at reasonable times at the worksite. Any materials or work that the Contracting Officer determines is defective or not in accordance with designs, drawings, and specifications, as approved by Western, shall be replaced or modified, as directed by Western, at the sole expense of the Contractor before the new facilities are energized.

### 21. As-Built Drawings.

Within a reasonable time, as determined by the Contracting Officer, after the completion of construction and installation of facilities pursuant to the contract, the Contractor shall submit to Western marked as-built prints of all Western drawings affected by changes made pursuant to the contract and reproducible drawings the Contractor has prepared showing facilities of Western. The Contractor's drawings of Western facilities shall use drawing title blocks, drawing numbers, and shall be prepared in accordance with drafting standards all as approved by the Contracting Officer. Western may prepare, revise, or complete said drawings and bill the Contractor if the Contractor fails to provide such drawings to Western within a reasonable time as determined by the Contracting Officer.

### 22. Equipment Ownership Markers.

22.1. The Contractor shall identify all movable equipment and, to the extent agreed upon by the parties, all other salvageable facilities constructed or installed on United States right-of-way or in Western substations pursuant to the contract which are owned by the Contractor, by permanently affixing thereto suitable markers clearly identifying the Contractor as the owner of said equipment and facilities.

22.2. If requested by the Contractor, Western shall identify all movable equipment and, to the extent agreed upon by the parties, all other salvageable facilities constructed or installed on the Contractor's right-of-way or in the Contractor's substations pursuant to the contract which are owned by the United States, by permanently affixing thereto suitable markers clearly identifying the United States as the owner of said equipment and facilities.

23. Third-Party Use of Facilities.

The Contractor shall notify Western of any proposed system change relating to the facilities governed by the contract or allowing third-party use of the facilities governed by the contract. If Western notifies the Contractor that said system change will, as solely determined by the Contracting Officer, adversely affect the operation of Western's system the Contractor shall, at no cost to Western, provide a solution to said adverse effect acceptable to Western.

24. Changes to Western Control Facilities.

If at any time during the term of the contract, the Contracting Officer determines that changes or additions to control, relay, or communications facilities are necessary to maintain the reliability or control of Western's transmission system, and said changes or additions are entirely or partially required because of the Contractor's equipment installed under the contract, such changes or additions shall, after consultation with the Contractor, be made by Western with all costs or a proportionate share of all costs, as determined by the Contracting Officer, to be paid by the Contractor. The Contracting Officer shall notify the Contractor in writing of the necessary changes or additions and the estimated costs to be paid by the Contractor. If the Contractor fails to pay its share of said estimated costs, the Contracting Officer shall have the right, after giving sixty (60) days' written notice to the Contractor, to terminate the applicable facility installation provisions of the contract and require the removal of the Contractor's facilities.

25. Modification of Western Facilities.

Western reserves the right, at any time, to modify its facilities. Western shall keep the Contractor informed of all planned modifications to Western facilities which impact the facilities installation pursuant to the contract. Western shall permit the Contractor to change or modify its facilities, in a manner satisfactory to and at no cost or expense to Western, to retain the facilities interconnection pursuant to the contract. At the Contractor's option, Western shall cooperate with the Contractor in planning alternate arrangements for service which shall be implemented at no cost or expense to Western. The Contractor and Western shall modify the contract, as necessary, to conform to the new facilities arrangements.

26. Transmission Rights.

If the contract involves an installation which sectionalizes a Western transmission line, the Contractor hereby agrees to provide a transmission path to Western across such sectionalizing facilities at no cost or expense to Western. Said transmission path shall be at least equal, in terms of capacity and reliability, to the path in the Western transmission line prior to the installation pursuant to the contract.

27. Construction and Safety Procedures.

\* 27.1. The Contractor hereby acknowledges that it is aware of the hazards inherent in high-voltage electric lines and substations, and hereby assumes full responsibility at all times for the adoption and use of necessary safety measures required to prevent accidental harm to personnel engaged in the construction, inspection, testing, operation, maintenance, replacement, or removal activities of the Contractor pursuant to the contract. The Contractor and the authorized employees, agents, and subcontractors of the Contractor shall comply with all applicable safety laws and building and construction codes, including the provisions of Western's current "Power Systems Safety Manual," "Construction, Safety, and Health Standards," and "Power System Clearance Procedures" in effect upon the signing of the contract; Except, That, in lieu of the safety program required herein, the Contractor may provide sufficient information to demonstrate that the Contractor's safety program is satisfactory to the United States.

27.2. The Contractor and its authorized employees, agents, and subcontractors shall familiarize themselves with the location and character of all the transmission facilities of Western and interconnections of others relating to the work performed by the Contractor under the contract. Prior to starting any construction, installation, or removal work, the Contractor shall submit a plan of procedure to Western which shall indicate the sequence and method of performing the work in a safe manner. No work shall be performed by the Contractor, its employees, agents, or subcontractors until written authorization to proceed is obtained from the Contracting Officer.

27.3. At all times when the Contractor, its employees, agents, or subcontractors are performing activities of any type pursuant to the contract, such activities shall be under supervision of a qualified employee, agent, or subcontractor of the Contractor who shall be authorized to represent the Contractor in all matters pertaining to the activity being performed. The Contractor and Western will keep each other informed of the names of their designated representatives at the site.

27.4. Upon completion of its work, the Contractor shall remove from the vicinity of the right-of-way of the United States all buildings, rubbish, used materials, concrete forms, and other like material belonging to the Contractor or used under the Contractor's direction, and in the event of failure to do so the same may be removed by Western at the expense of the Contractor.

\* Revised January 3, 1989.

27.5. In the event the Contractor, its employees, agents, or subcontractors fail to comply with any provision of this article, or Article 20 (Inspection and Acceptance) herein, the Contracting Officer or an authorized representative may issue an order to stop all or any part of the work until such time as the Contractor demonstrates compliance with the provision at issue. The Contractor, its employees, agents, or subcontractors shall make no claim for compensation or damages resulting from such work stoppage.

## VI. OTHER PROVISIONS.

### \* 28. Authorized Representatives of the Parties.

Each party to the contract, by written notice to the other, shall designate the representative(s) who is (are) authorized to act in its behalf with respect to those matters contained in the contract which are the functions and responsibilities of the authorized representatives of the parties. Each party may change the designation of its authorized representative(s) upon oral notice given to the other, confirmed promptly by written notice.

### 29. Effect of Section Headings.

Section headings or article titles appearing in the contract or these General Power Contract Provisions are inserted for convenience only and shall not be construed as interpretations of text.

### 30. Operating Guidelines and Procedures.

The parties to the contract may agree upon and put into effect from time to time, such other written guidelines and procedures as may be required in order to establish the methods of operation of the power system to be followed in the performance of the contract.

### 31. Uncontrollable Forces.

Neither party to the contract shall be considered to be in default in performance of any of its obligations under the contract, except to make payment as specified in Article 13 (Billing and Payment) herein, when a failure of performance shall be due to an uncontrollable force. The term "uncontrollable force" means any cause beyond the control of the party affected, including but not restricted to, failure of or threat of failure of facilities, flood, earthquake, storm, fire, lightning, epidemic, war, riot, civil disturbance or disobedience, labor dispute, labor or material shortage, sabotage, restraint by court order or public authority and action or nonaction by, or failure to obtain the necessary authorizations or approvals from, any governmental agency or authority, which by exercise of due diligence such party could not reasonably have been expected to avoid and which by exercise of due diligence it shall be unable to overcome. Nothing contained herein shall be construed to require a party to settle any



strike or labor dispute in which it may be involved. Either party rendered unable to fulfill any of its obligations under the contract by reason of an uncontrollable force shall give prompt written notice of such fact to the other party and shall exercise due diligence to remove such inability with all reasonable dispatch.

32. Liability.

32.1 The Contractor hereby agrees to indemnify and hold harmless the United States, its employees, agents, or contractors, from any loss or damage and from any liability on account of personal injury, death, or property damage, or claims for personal injury, death, or property damage of any nature whatsoever and by whomsoever made arising out of the Contractor's, its employees', agents', or subcontractors', construction, operation, maintenance, or replacement activities under the contract.

32.2 The United States is liable only for negligence on the part of its officers and employees in accordance with the Federal Tort Claims Act, as amended.

\* 33. Environmental Compliance.

Facilities installed under the contract by any party shall be constructed, operated, maintained, replaced, and removed subject to compliance with laws, executive orders, and regulations applicable to that party, including the National Environmental Policy Act of 1969, as amended, 36 CFR 800, and the Archeological Resources Protection Act of 1979.

34. Cooperation of Contracting Parties.

If, in the operation and maintenance of their respective power systems or electrical equipment and the utilization thereof for the purposes of the contract, it becomes necessary by reason of any emergency or extraordinary condition for either party to request the other to furnish personnel, materials, tools, and equipment for the accomplishment thereof, the party so requested shall cooperate with the other and render such assistance as the party so requested may determine to be available. The party making such request, upon receipt of properly itemized bills from the other party, shall reimburse the party rendering such assistance for all costs properly and reasonably incurred by it in such performance, including administrative and general expenses, such costs to be determined on the basis of current charges or rates used in its own operations by the party rendering assistance. Issuance and payment of bills for services provided by Western shall be in accordance with Articles 13 (Billing and Payment) and 14 (Nonpayment of Bills in Full When Due) herein. Western shall pay bills issued by the Contractor for services provided as soon as the necessary vouchers can be prepared which shall normally be within twenty (20) days.

\* Revised January 3, 1989.

35. Transfer of Interest in Contract by Contractor.

No voluntary transfer of the contract or of the rights of the Contractor under the contract shall be made without the written approval of the Administrator of Western; Provided, That if the Contractor operates a project financed in whole or in part by the Rural Electrification Administration, the Contractor may transfer or assign its interest in the contract to the Rural Electrification Administration or any other department or agency of the Federal Government without such written approval; Provided further, That any successor to or assignee of the rights of the Contractor, whether by voluntary transfer, judicial sale, foreclosure sale, or otherwise, shall be subject to all the provisions and conditions of the contract to the same extent as though such successor or assignee were the original Contractor under the contract; and, Provided further, That the execution of a mortgage or trust deed, or judicial or foreclosure sales made thereunder, shall not be deemed voluntary transfers within the meaning of this article.

36. Waivers.

Any waivers at any time by either party to the contract of its rights with respect to a default or any other matter arising under or in connection with the contract shall not be deemed a waiver with respect to any subsequent default or matter.

37. Notices.

Any notice, demand, or request required by the contract or the provisions of these articles to be in writing shall be considered properly given when delivered in person, or sent by either registered or certified mail, postage prepaid, or prepaid telegram addressed to each party's authorized representative at the principal offices of the party. The designation of the person to be notified may be changed at any time by similar notice.

38. Contingent Upon Appropriations.

Where activities provided for in the contract extend beyond the current fiscal year, continued expenditures by the United States are contingent upon Congress making the necessary appropriations required for the continued performance of the United States obligations under the contract. In case such appropriation is not made, the Contractor hereby releases the United States from its contractual obligations and from all liability due to the failure of Congress to make such appropriation.

39. Officials Not to Benefit.

No member of or delegate to Congress or Resident Commissioner shall be admitted to any share or part of the contract or to any benefit that may have arisen from the contract, but this restriction shall not be construed to extend to the contract if made with a corporation or company for its general benefit.

40. Covenant Against Contingent Fees.

The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure the contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty, Western shall have the right to annul the contract without liability or in its discretion to deduct from the contract price or consideration the full amount of such commission, percentage, brokerage, or contingent fee.

\* 41. Contract Work Hours and Safety Standards.

The contract, to the extent that it is of a character specified in Section 103 of the Contract Work Hours and Safety Standards Act (Act), 40 U.S.C.A. § 329 (1986), is subject to the provisions of the Act, 40 U.S.C.A. §§ 327-333 (1986), and to regulations promulgated by the Secretary of Labor pursuant to the Act.

\* 42. Equal Opportunity Employment Practices.

Section 202 of Executive Order No. 11246, 43 Fed. Reg. 46501 (1978), which provides, among other things, that the Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin, is incorporated by reference in the contract.

43. Use of Convict Labor.

The Contractor agrees not to employ any person undergoing sentence of imprisonment in performing the contract except as provided by 18 U.S.C. 4082(c)(2) and Executive Order 11755, December 29, 1973.